

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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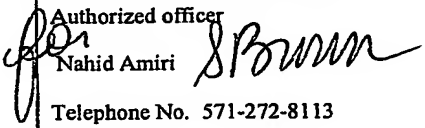
| | | |
|---|---|---|
| Applicant's or agent's file reference 1504.3007.001 | FOR FURTHER ACTION | See Form PCT/IPEA/416 |
| International application No. PCT/US04/39172 | International filing date (day/month/year) 22 November 2004 (22.11.2004) | Priority date (day/month/year) 16 December 2003 (16.12.2003) |
| International Patent Classification (IPC) or national classification and IPC IPC(7): E02D 19/00 and US Cl.: 52/169.5, 169.4; 405/229, 36, 38 | | |
| Applicant NIEMCZYK, ANDREW | | |

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:

- a. ☐ (sent to the applicant and to the International Bureau) a total of ___ sheets, as follows:
 - ☐ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
- b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

| | |
|--|---|
| Date of submission of the demand 15 July 2005 (15.07.2005) | Date of completion of this report 19 January 2006 (19.01.2006) |
| Name and mailing address of the IPEA/ US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201 | Authorized officer  Nahid Amiri Telephone No. 571-272-8113 |

Form PCT/IPEA/409 (cover sheet)(April 2005)

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/US04/39172

Box No. I Basis of the report

1. With regard to the language, this report is based on:

- ☒ the international application in the language in which it was filed.
- ☐ a translation of the international application into English, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4(a))
- ☐ international preliminary examination (under Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

- ☒ the international application as originally filed/furnished
- ☒ the description:
pages 1-12 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the claims:
pages 13-17 as originally filed/furnished
pages* NONE as amended (together with any statement) under Article 19
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the drawings:
pages 1/4-4/4 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages NONE
- ☒ the claims, Nos. NONE
- ☒ the drawings, sheets/figs NONE
- ☒ the sequence listing (*specify*): NONE
- ☒ any table(s) related to the sequence listing (*specify*): NONE

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/US04/39172**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

| | | |
|-------------------------------|---------------------------------|-----|
| Novelty (N) | Claims <u>1-20</u> | YES |
| | Claims <u>NONE</u> | NO |
| Inventive Step (IS) | Claims <u>2, 4-9, and 12-20</u> | YES |
| | Claims <u>1, 3 and 10-11</u> | NO |
| Industrial Applicability (IA) | Claims <u>1-20</u> | YES |
| | Claims <u>NONE</u> | NO |

2. Citations and Explanations (Rule 70.7)

Claims 1, 3, 10-11 lack an inventive step under PCT Article 33(3) as being obvious over US Patent No. 5,248,225 Rose.

In regard to claim 1: Rose discloses the claimed invention Figs. 3-4, column 5, lines 5-22, lines, the device diverting water from foundation including at least one water impermeable flexible member 14 having a short leg section that is abutable against an upper portion of foundation wall 18 and a long leg section extending substantially away from the foundation wall 18, except long leg section extending substantially away from the foundation wall, a distance at least as great as the tangent of 150 times the height of the basement wall below the impermeable flexible member. It would have been an obvious matter of design choice to provide leg with such a specific distance in order to minimize the water penetration into the foundation wall which depends on amount of water penetration into the trench.

In regard to claim 3: Rose discloses the claimed invention column 4, lines 52-54, the membrane 14 is formed from elastomeric or thermoplastic material, except the impermeable water flexible member being made from a polyethylene plastic material. It would have been obvious to one of ordinary skill in the art at the time of invention was made to formed the impermeable water flexible member from polyethylene plastic material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use in this case preventing the moisture not to penetrate into the foundation wall matter of obvious design choice.

In regard to claims 10-11: Rose discloses the claimed limitation as stated above in claims 1 and 3, except the method of protecting basement wall. It would have been obvious steps method to one of ordinary skill in the art at the time of invention was made to digged the ground to form the trench and placing the overlapping water impermeable mmeber and backing the trench with the soil above the water impermeable member and shaping the botto, of the trench to decline at a 5 degree slope away from basement wall in order to prevent water penetrating into the foundation wall.

Claims 1-20 meet the criteria set out in PCT Article 33(4), and thus has industrial applicability because the subject matter claimed can be made or used in industry.